TAI LEE OIL MILL CO. & ORS. v. NG OK LING

[O.C.J. (Chang Min Tat J.) February 22, 1967]

[Ipoh — Perak Civil Suit No. 476 of 1964]

Landlord and Tenant — Rent — Excess payment — Recovery of — Standard rent — Acceptance of figure in excess as standard rent either in ignorance of law or by negotiation — Effect of — Assignment by tenant — Plea of estoppel — Waiver — Control of Rent Ordinance, 1956, ss. 2, 3(4), 6(1)(b)(iii) — Limitation Ordinance, 1953, s. 20.

In July 1941 the defendant's father acquired by purchase a piece of land in Ipoh. On this land there were a number of huts and a building, No. K. 8, Jalan Ayer Puteh. This building was surrounded by a fence. In or about May 1942 the defendant's father leased out the said building to a partnership at a monthly rental of $100. The rent was subsequently raised to $200 and again $300. Subsequently when the partnership was reconstituted as Tai Lee Oil Mill Co., the 1st plaintiff firm, the tenancy of the premises was transferred to the new firm. In June 1950 the defendant, as one of the executors of his father's estate, gave notice to the 1st plaintiff terminating the tenancy and offering to grant a new tenancy at a monthly rental of $450. Arising from this demand the 1st plaintiff entered into negotiations with the defendant as a result of which it was agreed that the rent to be paid by the 1st plaintiff was $400 per month. This increased rent was paid until September 1956, and from thence the rent was increased to $500 per month. In April 1963 the affairs of the 1st plaintiff were wound up and the partnership was dissolved. The interests of the partnership including the tenancy, were then transferred to the 2nd plaintiffs, a limited company. Rents at $500 a month continued to be paid by the 2nd plaintiff to, and received by, the defendant. In September 1964 the defendant sold the land on which the demised premises were built and thereafter ceased to have any interest in the land. The plaintiff claimed for the recovery of a total sum of $25,000 under section 3(4) of the Control of Rent Ordinance previously paid by them to the defendant over and above the maximum recoverable rent in respect of the premises. The claim was limited by section 20 of the Limitation Ordinance to a period of six years preceeding the date of the issue of the writ.

Held: (1) on a proper interpretation, the standard rent of any premises unlet, unoccupied or unbuilt on September 25, 1940, is the rent of first letting after the said date. In the absence of any reference to and determination by the Rent Assessment Board, the rent at first letting remains the standard rent. Applying this interpretation to this case, the standard rent of the premises by operation of the permitted increase under section 6(1)(b)(iii) of the Control of Rent Ordinance, and in the absence of any increase in the rates payable in respect of the premises is $125 per month. The conduct of the parties in accepting $300 as the standard rent either in ignorance of the law or as a result of negotiations between them, did not affect the determination of the standard rent under the provision of the statute. The parties cannot contract out of the Ordinance and accordingly the plea of estoppel and waiver failed;

(2) tenants other than tenants at will and tenants at sufferance can assign their interests unless restrained by the terms of the lease. In the absence of such a term in this case, on the evidence, the 2nd plaintiff had taken a valid assignment of the tenancy from the 1st plaintiff and the assignment was with the knowledge of and without objection by the defendant;

(3) as there was an accural of action on each individual overpayment the moment it was made, and as the claim accrued before the dissolution, the partnership had authority to institute the action for the refund;

(4) under section 3(4) of the Control of Rent Ordinance, the tenant who paid more than the recoverable rent has a right to recover the excess payment as soon as he had paid it and even though he had entered into an agreement to pay it. This right is something of value to the tenant. It is a right which is capable of assignment and it is something which, in the event of his bankruptcy, would pass to his trustees in bankruptcy for the benefit of his creditors. It is a right which, on his death, passes to his legal personal representative. The right to recover may, subject to the statutory bars of limitation, be exercised by the tenant or his trustee in bankruptcy or, on his death, his legal personal representative at any time, whether during the pendency of or after the tenancy, but the claim is to be made against the landlord who received the overpayment or, after his death, his estate. The plaintiff's claim must therefore be allowed.

Cases referred to:—

(1) *Maritime Electric Co.* v. *General Dairies, Ltd.* [1937] A.C. 610.

(2) *Oversea Chinese Banking Corporation* v. *Eastern Auto Co. Ltd.* [1961] M.L.J. 300.

(3) *Loke Yung Hong* v. *Shanghai Furniture Co. & Anor.* [1940] M.L.J. 136 C.A.

(4) *Kan Sam Mooi* v. *Shin Heong Long* [1959] M.L.J. 250.

(5) *In re Frank Holt* [1921] 2 K.B. 831.

(6) *Roppel* v. *Bennett* [1949] 1 K.B. 115.

(7) *Riordan* v. *Michin* [1949] 1 K.B. 137.

(8) *Wedgewood* v. *Heddersley* (1923), Estate Gazette dated 5th May, 1923.

(9) *Murray* v. *Webb* [1925] Ir. L.T. Rep.

(10) *Hole* v. *Cuzen* [1953] 1 All E.R. 87.

(11) *Twomey* v. *Cronin* [1937] 1 Ir. Rep. 324.

(12) *Dean* v. *Wiesengrund* [1955] 2 Q.B. 120.

CIVIL SUIT.

P. P. Dharmananda for the plaintiffs.

N. Sharma for the defendant.

Cur. Adv. Vult.

Chang Min Tat J.: In this action, the plaintiffs claim against the defendant, as the executor of the estate of Ng Fan alias Ng Fun, for the recovery of a total sum of $25,500 under the provisions of section 3(4) of the Control of Rent Ordinance, 1956, previously paid by them to the defendant over and above the maximum recoverable rent in respect of the premises known as No. K. 8, Jalan Pasir Puteh, Ipoh. The claim is limited by section 20 of the Limitation Ordinance, 1953, to a period of six years immediately preceding the date of the issue of the writ.

It is common ground that in July, 1941, the defendant's father acquired by purchase a piece of land held under Certificate of Title No. 8803 for Lot No. 29822 in the Town of Ipoh. On this piece of land were built a number of huts and a building bearing assessment No. K. 8,

Jalan Pasir Puteh. This building was used by the vendor personally as a sauce factory and was surrounded by a fence of corrugated iron-sheets. The fenced-in area formed only a part of the said piece of land. What occurred between July, 1941, and May, 1942, is not in evidence, but in or about the month of May, 1942, the defendant's father first leased out the said building to a partnership under the name and style of Sin Eng Hong at a monthly rental of $100. There was not then, nor at any time thereafter, any condition against assignment. The rent was subsequently raised to $200 and again to $300. Subsequently, too, when the partnership of Sin Eng Hong was reconstituted with the same partners as Tai Lee Oil Mill Co., the 1st plaintiff firm, the tenancy of the house was transferred to the new firm. The position shortly after the re-occupation of this country was that the 1st plaintiff held a monthly tenancy paying a rental of $300.

On the 9th June, 1950, the defendant, as one of the executors of his father's estate, caused to be sent to the 1st plaintiff a notice terminating the tenancy and offering to grant a new tenancy at a monthly rental of $450, taking the $300 hitherto paid as the standard rent and applying the permitted increase of 50% for business premises under the Control of Rent Ordinance, 1948, as amended. Arising from this demand, the 1st plaintiff entered into negotiations with the defendant as a result of which it was agreed that the rent to be paid by the 1st plaintiff was $400 per month. This increased rent was paid until September, 1956. From 1st September, 1956, the rent was again increased to $500 per month. The increase to $500, by contrast, would not appear to have even an apparent justification.

On 3rd April, 1963, the affairs of the 1st plaintiff were wound up and the partnership was dissolved. The interests of the partnership were then transferred to the 2nd plaintiff, a limited company, of which some of the shareholders were the partners of the 1st plaintiff. Included amongst the interests so transferred was the tenancy in the premises in question. Rents at $500 a month continued to be paid by the 2nd plaintiff to and received by the defendant. On 2nd September, 1964, the defendant, as executor, sold the land on which the demised premises were built and thereafter ceased to have any interest in the land.

During the period of 6 years not barred by limitation, the rents paid were at $500 a month. For this period, the 1st plaintiff paid the said rents from 1st November, 1958, to 31st March, 1963, and the 2nd plaintiffs from 1st April, 1963, to 31st August, 1964. All rent receipts were issued in the name of Tai Lee.

No applcation to the Rent Assessment Board either under the provisions of section 6 of the Rent and Charged Land (Restriction) F.M.S. Enactment No. 14 of 1940, or section 6 of the Control of Rent Ordinance, 1948, or section 8 of the Control of Rent Ordinance, 1956, was made by any of the parties at any time. There had never been any determination of the standard rent.

All this is common ground.

What is in serious dispute is the question of what is the standard rent for the premises, a question that is, on the pleadings, related to the area that was first demised in May, 1942. The 1st plaintiff alleged that what was first leased were the premises K. 8, Jalan Pasir Puteh, and the land round it enclosed by the fence. On the other hand, the defendant averred that in May, 1942, the premises let out to Sin Eng Hong consisted of the building and a small strip of land round it, the rest of the area inside the fence being excluded, and I can do no better than to quote the words of the statement of defence

> "On the reoccupation of this country the rent agreed and settled between the then tenants and the deceased in respect of the portion of land occupied by the tenants was $300 per month, which continued to be agreed as and was treated as the standard rent of the portion of the premises let out to the then tenants Tai Lee Oil Mill (which then occupied far more area surrounding the building than the original tenancy in May 1942)."

The defendant alleged that the increase to $300 was in consequence of the tenants being granted a bigger portion of land round the house. His knowledge of this is hear-say, and it is to his credit that he said in examination-in-chief that he only learned of this from his father. He was not aware of any intermediate increase from $100 to $200. Under cross-examination, he alleged that the fence was once extended and that the extension took place when the rent paid was increased to $300, that is, in or prior to 1945. He, however, only noticed the extension some time in 1950. The rent collector for 1942-1944 was called to give evidence for the defence. He himself appeared somewhat indefinite about the exact area that was first let, his knowledge being derived again from the defendant's father. He knew of the fence but was unable to say whether it had been extended or not. He testified that there were 2 huts inside the compound which he said were let out separately. On the other hand, the 1st plaintiff averred that the area first let to Sin Eng Hong was the whole area inside the fence and that this area continued to be the area let without increase at all times since the commencement of the lease in 1942. P.W.1, Keok Bin Leong, an original partner of Sin Eng Hong and a partner also in the 1st plaintiff firm, denied that there ever had been any additional land let out to him after the first letting. He further alleged that there was a building inside the fenced-in area beside

the sauce factory and that this building was included in the lease and was used by him as labourers' quarters. His evidence was, by and large, supported by that of P.W.2, Lau Geok Aun, who was himself one of the partners of Sin Eng Hong. The cross-examination of these two witnesses was directed mainly to evidence that the business of the partnership continued to develop and that this development created a need for more land. There is thus a direct conflict of evidence.

On a review of the evidence and the pleadings, I accept the evidence of P.W.1 and P.W.2 that the area let remained the same throughout as being the truth. I am compelled to accept their evidence by the manner in which they gave their evidence and from their obvious and undisputed personal knowledge of the facts of the lease. What P.W.1, who commenced the business of Sin Eng Hong, said:—

"The mill was for the extraction of coconut oil from copra. It had to have a drying yard. When I was looking for a mill in 1942, I looked for a place with such a drying yard",

considered in relation to the obvious advantages of a fenced-in and exclusive drying yard, has the ring of truth in it. Furthermore, the defence does not bear out the several increases as being related to several demands for more land. I, therefore, find as a fact that the area first let was and is the area now occupied by the 2nd plaintiff.

The next question to consider is the standard rent of the demised premises. It is, however, objected to by learned counsel for the defence that notwithstanding any finding of fact, there is, on an interpretation of the Ordinance, no standard rent of the premises, in the absence of any application to and determination by the Rent Assessment Board. Now, the standard rent of any controlled premises is defined in section 2 of the Ordinance in the following terms:—

"'standard rent' means the rent at which the premises were let on the twenty-fifth day of September, 1940; or, in the case of premises which were then unlet, unoccupied or unbuilt, the rent at which the premises were first let after the twenty-fifth day of September, 1940:

Provided that, where the date on which such premises were first let after the 25th day of September, 1940 was earlier than the 5th day of September, 1945, the Board may by Order determine the rent at which in its opinion the premises would have been let on the 25th day of September, 1940 if they had then been let, and the rent so determined shall thereupon be deemed to be the standard rent of the premises;"

In the instant case, the second limb of the definition applies, but it is urged upon me that the standard rent of the demised premises was not the rent at which the premises were first let after the 25th day of September, 1940, that is, $100 per month, since the proviso to the definition qualified the second limb to such an extent that without any determination by the Board, there could be no standard rent. It is further urged that without proof of any standard rent, the action for recovery of overpayment must fail. With all respect to the learned counsel for the defendant, I cannot accept his interpretation of the Ordinance. It has the obvious disadvantage of leaving premises outside the Ordinance which the Ordinance was enacted to protect.

The dateline, 25th day of September, 1940, is the date of the coming into force of the Rent and Charged Land (Restriction) Enactment No. 14 of 1940, which the Control of Rent Ordinance, 1948, repealed subsequently. The 5th day of September, 1945, is the date of the resumption of civil administration in this country. Between these two dates was the period of the Japanese Occupation, and it is notorious that during this period money became grossly inflated. If all this is borne in mind, it is obvious that, without the proviso, the situation would arise that a rent payable in grossly inflated Japanese money would be the standard rent in an equivalent number of Malayan dollars. The proviso is obviously enacted to provide for such a situation.

In my view, on a proper interpretation, the standard rent of any premises unlet, unoccupied or unbuilt on the 25th day of September, 1940, is the rent of first letting after the said date. In the absence of any reference to and determination by the Rent Assessment Board, the rent at first letting remains the standard rent.

Applying this interpretation to this case, I find that the standard rent of the premises, by operation of the permitted increase under section 6(1)(b)(iii) of the Control of Rent Ordinance, 1956, and in the absence of any increase in the rates payable in respect of the premises, is $125 per month. The conduct of the parties in accepting $300 as the standard rent, either in ignorance of the law or as a result of negotiations between them, does not affect the determination of the standard rent under the provisions of the statute.

The defence of estoppel, in my view, fails. As was said in the Privy Council in the case of *Maritime Electric Co.* v. *General Dairies, Ltd.*,[1] at p. 620:—

". . . an estoppel is only a rule of evidence which under certain special circumstances can be invoked by a party to an action; it cannot therefore avail in such a case to release the plaintiff from an obligation to obey such a statute nor can it enable the defendant to escape from a statutory obligation of such a kind on his part. It is immaterial whether the obligation is onerous or otherwise to the party suing. The duty of each party is to obey the law."

The reference in that case was to the Public Utilities Act of Canada, which specified the rates at which electricity was to be charged to consumers. The Act was described as being one

enacted for the benefit of a section of the public i.e. on the grounds of public policy in a general sense and the same description may well be made of the Rent Control Ordinance.

It is also, as I conceive it, settled law that the parties cannot contract outside the Ordinance.

There can also be, in the matter of the standard rent, no question of waiver which, as has been said, to be operative in tenancy cases is confined to acceptance of rent after knowledge of a breach of covenant or an obligation of the tenancy — see *Oversea Chinese Banking Corporation* v. *Eastern Auto Co. Ltd.*[2]

Next, counsel for the defendant says that the 2nd plaintiffs have no standing, since a monthly tenancy cannot be assigned. For this proposition, he relies on the authority of *Loke Yung Hong* v. *Shanghai Furniture Co. & Anor.*,[3] but as was pointed out by Ong Hock Thye J. (as he then was) in his judgment in *Kan Sam Mooi* v. *Shin Heong Long*,[4] the proposition therein expressed was *obiter*. And with respect and likewise, I agree that tenants other than tenants at will and tenants at sufferance can assign their interests unless restrained by the terms of the lease. In the absence of such a term, I hold, on the evidence, that the 2nd plaintiffs have taken a valid assignment of the tenancy from the 1st plaintiff and that the assignment was with the knowledge of and without objection by the defendant.

The defence further relies on two other objections. In the first, it is contended that the 1st plaintiff firm having been dissolved on the 3rd day of April, 1963, the action could not be maintained by it. This objection is grounded on section 216 of the Contracts (Malay States) Ordinance, 1950, which enacts that:—

> "216. After a dissolution of partnership, the rights and obligations of the partners continue in all things necessary for winding-up the business of the partnership."

Reliance is placed on the evidence adduced in cross-examination that in April, 1963, the business of the partnership was completely wound up, there being at this time a complete ignorance on the part of the partners of their rights to claim for the repayment of the excess of the standard rent paid. It is urged that their claim, not being for the purpose of winding-up, cannot therefore be maintained by the 1st plaintiff firm. With all respect, I am unable to accept this submission as being correct in law. In the case of *In re Frank Holt*,[5] it was held on the construction of section 38 of the Partnership Act, 1890, (which is the same as section 216 of the local Ordinance) that the bankruptcy notice issued in the firm's name and a bankruptcy petition presented in that name after the dissolution of the partnership in respect of a judgment recovered before the dissolution were perfectly regular. In this action, the claim accrued before the dissolution, there being an accrual of action on each individual overpayment the amount it was made. I cannot assume or agree that the partnership has no authority to institute an action for the refund.

Then counsel for the defendant urges that the plaintiffs could not maintain the action for refund of the overpayment of rent, if any, in respect of the demised premises against him on the ground that, on a strict interpretation of the Control of Rent Ordinance, 1956, in particular the definitions of landlord and tenant and of section 3(4), which is the statutory provision for the action, the right to claim applies only to tenants who, at the time of the institution of the action, are tenants and the action is against landlords who again at such time are landlords. No one will argue against the rule for strict construction of any statutory provisions affecting the rights of persons, but perhaps for the reason that this proposition seems so attractive it must be examined to see whether the construction, which counsel for the defendant urges with such great persuasion and persuasiveness, is sound.

Put simply the proposition falls into three limbs:—

(1) At the time of the institution of the action, the relationship of landlord and tenant must exist between the plaintiff and the defendant in respect of the demised premises,

(2) At such time the claim must be made against the landlord of the premises,

(3) and at such time, the plaintiff must be the tenant of the premises.

If at the time of the institution of the action for recovery of overpayment, the plaintiff was no longer the tenant of the premises, or the defendant was no longer the landlord of the premises, or at such time the tenancy during which the overpayment was made was no longer in existence, then the claim does not come within section 3(4) of the Control of Rent Ordinance, 1956, and must fail.

The reason for such a submission is patently clear since, if correct or upheld, it means that, firstly, the defendant is not liable for any claim for refund by either of the plaintiffs and, secondly, the action could not be maintained against him since at the institution of the action on 28th October, 1964, the defendant had, by sale of the demised premises, lost his title as landlord and there was no more the relationship of landlord and tenant between him and either of the plaintiffs.

The submission is, as I understand it, grounded on:—

(i) the use of the present tense in the definition of landlord and tenant, and particularly the use of "means"

and "includes" in such definitions in section 2 of the Ordinance, and

(ii) the plain wording of section 3(4) of the said Ordinance.

Now the definitions are in these words:—

"2. 'landlord' means the landlord of premises in respect of which a tenancy exists and includes the landlord of a statutory tenant . . .

'tenant' means the tenant of the premises in respect of which a tenancy exists and . . . includes a statutory tenant and the widow of a tenant who was residing with him at the time of his death . . ."

and section 3(4) reads as follows:—

"3(4) A tenant who has paid his landlord a sum in excess of the rent which may lawfully be received under the provisions of this section may recover such sum from the landlord."

On this submission the court is asked to limit any action under the provisions of section 3(4) of the Ordinance to the very persons who have the actual status of landlord and tenant between them at the commencement of the action, in other words, to declare that no action lies in respect of tenancies not in actual existence at the institution of the action or to past tenancies or to past relationship of landlord and tenant.

The argument about the use of the present tense can be easily disposed of. As was said by Somervell L.J. in the Court of Appeal, when commenting on the fact that words were not used referring to the past but that words used referred to the present and the future in the English Rent Restriction Acts, in particular in the section thereof concerning furnished lettings, in *Roppel* v. *Bennett*:—[6]

". . . it is normally the case that people can by legal proceedings initiated on a certain date claim in respect of any relief to which they may be entitled over a past period, whereas it is less usual, or unusual, that a person can resort to a court before the injury complained of has actually descended upon him."

And again in *Riordan* v. *Minchin*:—[7]

"I pointed out in my judgment, *supra*, that it is quite normal in such a statutory provision to find the present tense. Under our procedure it is the normal case that a plaintiff issues a writ and claims relief and damages in respect of something which has happened in the past. No express words in the past tense are needed to authorize a person to whom a statute gives a remedy or relief of some kind to claim in respect of the past."

No case directly in point on the interpretation of section 3(4) of the Ordinance is cited, and I myself am unable to discover any such case. Reliance is, however, had to several Irish and English cases. Now, the law in Ireland and in England is not strictly *in pari materia* with the law in Malaya, but it was submitted that the *rationis decidendi* thereof applied.

In support of the first limb of his proposition, counsel for the defendant relies on the case of *Wedgewood* v. *Heddersley*,[8] a divided decision of the Divisional Court. In this case, the tenant claimed to recover the rents overpaid to her former landlord and instituted the action against him. From the facts of the case, it is clear that this overpayment was determined in apportionment proceedings taken by the tenant against the successor in title of the landlord, to which proceedings the landlord was not a party. The decision of Lush J. whose decision, upholding the judgment of the county court judge, who heard the case in the first instance, becomes the deciding judgment of the divided Divisional Court, is regrettably not verbatim. He, however, is reported to have said that an order made on a new landlord he could not think applied to a landlord who had parted with the reversions of the property. On a consideration of the facts of the case, I cannot accept this as the *ratio decidendi*. In my view, all that this case decided is that the former landlord, who was sued for alleged overpayments of rent, was not bound by a rent ascertained in apportionment proceedings to which he was not a party.

The case of *Murray* v. *Webb*,[9] is also relied on. But this case dealt with the claim of the tenant of his right to deduct the rent overpaid to the former landlord from the present landlord, and it was held that he was not entitled to do so. The case turned on the construction of section 15(1) of the Increase of Rent and Mortgage (Restrictions) Act, 1923, of Ireland, which reads, in its relevant parts:—

"Where any sum has . . . been paid on account of any rent . . . being a sum which is by virtue of this Act irrecoverable by the landlord . . . the sum so paid shall be recoverable from the landlord . . . who received the payment or his legal personal representative by the tenant . . . by whom it was paid and any such sum, and any other sum which under this Act is irrecoverable by a tenant from a landlord or repayable by a landlord to a tenant, may, without prejudice to any other method of recovery, be deducted by the tenant . . . from any rent . . . payable by him to the landlord."

This case dealt with the question of recovery of overpaid rents by deduction from the current rent, and in particular the interpretation of the second part of the said section. It does not appear to have any relevance. Our Ordinance has no provisions for such deductions.

In any event, all that case decided was that on a proper interpretation, the second part of the said section applied only as between the landlord who received and the tenant who made the overpayments.

The case of *Hole* v. *Cuzen*,[10] is cited as authority for the proposition that the claim for refund for overpayment must be made to the landlord, who received the overpayment or his trustee in bankruptcy, under the provisions of section 14(1) of the Increase of Rent and Mortgage Interest (Restrictions) Act, 1920, of England, which is *in pari materia* with the corresponding section, see above, in the Irish Act. No one would, I conceive, quarrel with the pro-

position that such overpayment is not a liability that is attached to or running with the land. To hold otherwise would, in the words of Johnston J. in *Murray* v. *Webb, supra,* have "very far-reaching effects resulting in great burdens on purchasers of property." In the absence of any clear provisions in the law, no such burdens could attach.

I do not consider that *Murray* v. *Webb, supra,* and *Hole* v. *Cuzen, supra,* are of any assistance. The argument, of course, is that by reason of the appearance of the words "or his legal personal representative" after the words "the landlord . . . who received the payment", and the absence of such words after the words "by the tenant . . . by whom it is paid" in the relevant section of the Irish and English Acts, the clear intention of the Legislature, and on a strict interpretation, the clear meaning of the section is that the right to claim is personal to the tenant and the liability to repay such overpayments is personal to the landlord, who received the overpayment, and after his death to his legal personal representative.

In support of his proposition that the right to claim is personal to the tenant who overpaid, counsel for the defendant relies on two Irish cases, the case of *Twomey* v. *Cronin,*[11] a decision of the Irish High Court, and *Minto* v. *Cahill,*[12] a decision of the Supreme Court of Ireland on a case stated. Both these cases decided that the rent paid in excess of the amount permitted by the Act of 1923 was not recoverable by the personal representative of the deceased tenant from the landlord, and the decision was based entirely on the interpretation of the relevant section 15(1) of the Irish Act of 1923. The right was held personal to the tenant. On his death it vanished. It was not assignable or transmissible.

In reply, counsel for the plaintiff drew the attention of the court to the fact that *Twomey's* case, *supra,* and *Minto's* case, *supra,* have been disapproved in England in the case of *Dean* v. *Wiesengrund,*[12] a decision of the Court of Appeal. The Court of Appeal unanimously upheld the right of the executor of the deceased tenant's estate to recover overpayments from the landlord. Singleton L.J. says at page 128:—

> "I am unable to regard the reference to the personal representative of the landlord against whom a claim can be made as sufficient to deprive the estate of the tenant of the benefit of a right or an asset which is given to him by the statute. There is no clear indication that the right is to be taken away in the event of the tenant's death before he has obtained payment. Thus I find myself unable to agree with the two judgments reported in the Irish Reports . . ."

Earlier on, the learned Lord Justice says at page 125:—

> "It seems to me that the landlord's estate would have been liable to the tenant without the introduction of the words 'or his personal representative,' and that those words must have been included to make it abundantly clear and to avoid uncertainty on a subject which would normally involve only small amounts, and on which it was particularly desirable to avoid uncertainty."

Jenkins L.J. says at page 130:—

> "I see no justification for any such implied exclusion of the tenant's personal representative. It may well have been thought necessary, or *ex abundanti cautela* desirable to include an express reference to the landlord's personal representative in defining the nature and extent of the liability laid upon him by the enactment, so as to leave no doubt that his liability was to be the ordinary liability of a debtor, but unnecessary to do more in defining the right of the tenant to recover the amount in question than to give him simpliciter the right of recovery, which would in itself clearly suffice to constitute the amount in question a debt owing to the tenant from the landlord or his personal representative, with all the ordinary incidence of a debt as regards assignment, devolution on death, and so forth."

With respect, I find myself in complete agreement with the decision in *Dean* v. *Wiesengrund, supra.*

If, as Singleton L.J. and Jenkins L.J. have said, the words "or his legal personal representative" after "the landlord" are superfluous, then section 15(1) of the English Act will, with the superfluous words omitted, read almost identically with section 3(4) of the Control of Rent Ordinance, 1956.

I, therefore, reject the submission of the defence as being untenable on a proper construction of section 3(4) of the Control of Rent Ordinance, 1956. In my view, this section says no more than this, that the tenant who paid more than the recoverable rent has a right to recover the excess payment as soon as he had paid it and even though he had entered into an agreement to pay it. This right is something of value to the tenant: It is a right which is capable of assignment and it is something which, in the event of his bankruptcy, would pass to his trustee in bankruptcy for the benefit of his creditors. It is a right which, on his death, passes to his legal personal representative. The right to recover may, subject to the statutory bars of limitations, be exercised by the tenant or his trustee in bankruptcy or, on his death, his legal personal representative at any time, whether during the pendency of or after the tenancy, but the claim is to be made against the landlord who received the overpayment or, after his death, his estate.

The plaintiffs' claim must be allowed. In their statement of claim, the 1st plaintiff's claim was expressed to be for the period of 1st November, 1958, to 31st March, 1963, a period of 53 months. For this period, the overpayment at the rate of $375 is, by calculations, $19,875. The claim, however, is for $19,125. The overpayment by the 2nd plaintiff for the period 1st April, 1963, to 31st August, 1964, is correctly calculated at $6,375. The total period claimed for both plaintiffs is for 70 months from 1st

November, 1958, to 31st August, 1964. There will, therefore, be judgment for the 1st plaintiff in the sum of $19,125 and for the 2nd plaintiff in the sum of $6,375.

I will now hear arguments as to costs.

Claim allowed.

Solicitors: *Dharmananda & Co.; N. Sharma.*

TURQUAND, YOUNG & CO. v. YAT YUEN HONG CO. LTD.

[O.C.J. (Ambrose J.) February 25, 1967]

[Singapore — Suit No. 471 of 1966]

Landlord and Tenant — Promise by tenant to surrender premises — Promise by landlord to pay valuable consideration — Whether enforceable by tenant — Premiums on Leases Ordinance (Cap. 253), s. 2(1) — When compliance with s. 2 impossible — Effect on promise or agreement — When payment of consideration lawful under s. 2(1) (Cap. 253) — When payment of consideration not contravention of Control of Rent Ordinance (Cap. 242), s. 4.

Contract — Want of mutuality.

Interpretation — Intention of legislature — Words clear and unambiguous.

The plaintiffs, tenants of rent controlled premises, agreed in writing with the landlord/defendants that they (the tenants) would vacate the premises on March 7, 1966 and in consideration thereof the landlords would pay $60,000 on March 7, 1966 before possession and $50,000 by five equal monthly instalments of $10,000. As the defendants failed to pay the $60,000 or comply with the remaining clauses of the agreement, the plaintiffs brought this action to enforce the agreement against their landlords. The defendants admitted making the agreement but raised two points of law which were set down for hearing to be disposed of before the trial of the action persuant to R.S.C., O. XXVI r. 2. The points were (i) whether the agreement was unlawful for non-compliance with section 2 of the Premiums on Leases Ordinance (Cap. 253) by reason of non-presentation forthwith to the City Council or the successors thereof; (ii) whether the agreement was unenforceable, the premises being subject to the provisions of the Control of Rent Ordinance (Cap. 242).

Held: (1) under the Premiums on Leases Ordinance (Cap. 253), to require the giving up possession of any building for valuable consideration was unlawful unless (a) the particulars of such consideration were furnished in a written document and (b) the document was forthwith presented for inspection by the person giving up possession to the City Council. The plaintiffs had not been guilty of any unlawful act under section 2(1) of the Premiums on Leases Ordinance because in the present case condition (a) above had been complied with, and condition (b) above was to be complied with by the plaintiffs only on giving up possession and as possession had not yet been given up by the plaintiffs the duty to present the document for inspection to the City Council had not arisen. Furthermore, after the Local Government Integration Ordinance, 1963 came into operation on September 1, 1963 it was impossible for the plaintiffs to comply with condition (b) as there was no statutory provision for the function of receiving and inspecting the document referred to in section 2(1) of the Premiums on Leases Ordinance to be exercised by anyone. Condition (b) must therefore be regarded as suspended until statutory provision was made for the function in question to be exercised by someone;

(2) the consideration required by the plaintiffs to be given by the defendants was not in addition to the rent. The consideration was required as a condition of the surrender of the tenancy to the landlords. The consideration was not required as a condition of the transfer of the tenancy and therefore the plaintiffs did not contravene the provisions of section 4 of the Control of Rent Ordinance.

Cases referred to:—

(1) *Sameen* v. *Abeyewickrema* [1936] A.C. 597 at p. 609.

(2) *Rajenbach* v. *Mamon* [1955] 1 Q.B. 283.

(3) *Barton* v. *Finchans* [1921] 2 K.B. 291.

CIVIL SUIT.

K. A. O'Connor for the plaintiffs.

A. P. Godwin for the defendants.

Cur. Adv. Vult.

Ambrose J.: In this action the plaintiffs claim from the defendants the sum of $60,000 alleged to be due on the 7th March, 1966, under an agreement dated the 17th February, 1966, and interest at the rate of eight per cent per annum from the date of the writ, the 22nd March, 1966, to the date of payment.

The agreement is alleged to be for the compensation of the plaintiffs by the defendants for vacating a rent controlled property known as No. 1 Bishopsgate, Singapore. It reads as follows:—

"17th February, 1966.

No. 1 Bishopsgate

Heads of agreement

1. Vacant Possession: 7th March, 1966.

2. Compensation: $110,000 payable

(a) $60,000 on 7th March 1966 before possession.

(b) $50,000 by five equal monthly instalments of $10,000 each payable on the last day of each succeeding month. 1st payment 7th April 1966.

(c) Interest payable on balance from time to time due at 8% per annum at the end of each month at same time as the above-mentioned instalments.

(d) Bankers' guarantee to be given on 7th March, 1966 guaranteeing payment of (b) and (c).

(e) Drew & Napier's legal costs to be paid by Yat Yuen Hong Co. Ltd."

The plaintiffs allege that the sum of $60,000 was due to be paid by the defendants under the agreement on the 7th March, 1966, before possession. They further allege that they are now and have at all material times been ready and willing to give up possession of the premises upon payment of the sum of $60,000 and upon compliance by the defendants with the remaining clauses of the agreement, but the defendants have failed so to pay or comply.

The defence admits the making of the agreement dated the 17th February, 1966, but raises two points of law.

On the 13th May, 1966, on an application made by the plaintiffs, it was ordered that the